

CAUSE NO. _____

**DEFENSE ENERGY CENTER OF
EXCELLENCE d/b/a NATIONAL
SECURITY TECHNOLOGY
ACCELERATOR**
Plaintiff

V.

**JACKSON WALKER, LLP and
JENNIFER BRYANT**
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT COURT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE COURT JUDGE OF SAID COURT

Plaintiff, Defense Energy Center of Excellence d/b/a National Security Technology Accelerator, complains of Defendants, Jackson Walker, LLP and Jennifer Bryant, individually, and files this Original Petition and Request for Disclosure, and in support thereof, would respectfully show as follows.

**I
DISCOVERY CONTROL PLAN**

1. Based upon this Petition, this case should be controlled by a discovery control plan Level 3 pursuant to the Texas Rules of Civil Procedure, Rule 190.4.

**II
RULE 47 STATEMENT OF RELIEF**

2. In accordance with Texas Rule of Civil Procedure 47, Plaintiff seeks monetary relief in excess of \$1,000,000. This is not an expedited action.

III PARTIES

3. Plaintiff, Defense Energy Center of Excellence d/b/a National Security Technology Accelerator, is a nonprofit company organized under the laws of Texas.

4. Defendant, Jennifer Bryant is an attorney licensed to practice law in the State of Texas and may be served with citation at her principal place of business, Jackson Walker, LLP, 1401 McKinney St., Suite 1900, Houston, Texas 77010, or wherever she may be found.

5. Defendant, Jackson Walker, LLP is a law firm formed for the practice of law in the State of Texas and may be served with citation by serving its managing partner, C. Wade Cooper at his principal place of business, Jackson Walker, LLP, 100 Congress Avenue, Suite 1100, Austin, Texas 78701, or wherever he may be found.

IV JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the controversy because the claims asserted in this Petition arose, in whole or in part, in Texas and the amount in controversy exceeds the minimum jurisdictional limits of this Court.

7. This Court has personal jurisdiction over each Defendant because the acts and/or omissions complained of herein occurred in Texas, each Defendant does business in Texas and/or committed a tort, in whole or in part in Texas.

8. Venue is properly laid in Harris County, Texas because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas and/or because Defendants reside in or have a principle office in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1), (2) and (3).

V FACTUAL BACKGROUND

9. This is a legal malpractice¹ lawsuit against Houston attorney Jennifer Bryant (“Bryant”) and her law firm, Jackson Walker, LLP (collectively, “Defendants”) arising out of their representation of Defense Energy Center of Excellence d/b/a National Security Technology Accelerator (“NSTXL”) in business matters.

10. NSTXL was formed in April, 2014 by Tim Greeff (“Greeff”), Matt Laudon (“Laudon”) and Joseph Kopser (“Kopser”) in order to connect innovative technologies with government organizations, primarily the Department of Defense (“DoD”), so that those innovative technologies can assist the DoD in its mission. Greeff, Laudon and Kopser were also the original board members of NSTXL. On January 23, 2018, Laudon was removed as a board member.

11. NSTI, LLC d/b/a TechConnect (“TechConnect”) is a small conference organizer formed by Laudon in 1990. When Laudon became a board member of NSTXL, he introduced Greeff and NSTXL to Bryant at Jackson Walker, and offered Jackson Walker’s services in direct support of NSTXL. Thereafter, NSTXL availed itself to the legal services of Bryant and Jackson Walker (the “Lawyers”), utilizing Laudon in his role as Board member as liaison between NSTXL and the Lawyers. In their role as legal advisors to NSTXL, the Lawyers represented NSTXL regarding a number of matters, including the structure of its agreements with counterparties, employment agreements, a loan agreement between NSTXL and TechConnect, the review of corporate organizational documents, and corporate governance matters. More importantly, however, the Lawyers prepared the Vendor Agreement between NSTXL and TechConnect on behalf of both parties, billing NSTXL for more than eight hours of time for their

¹ Legal malpractice is an umbrella term that encompass a number of different claims against a lawyer.

work on the agreement. The Vendor Agreement memorializes the purported business relationship between TechConnect and NSTXL.

12. Even though there was an inherent conflict of interest between Laudon and TechConnect on the one hand and NSTXL on the other hand, the Lawyers did not provide any disclosures regarding the joint representation. What is worse, unbeknownst to NSTXL, the Lawyers drafted the agreements between TechConnect/ Laudon and NSTXL in a way that significantly favored Laudon, who is Bryant's nephew. If NSTXL would have been advised that Jackson Walker was not representing its interests, or the full extent of the conflict, it would have had independent counsel review the terms of these agreements and would have never agreed to them as written.

13. Eventually a dispute arose between TechConnect/Laudon and NSTXL over the terms of the agreements drafted by the Lawyers, and TechConnect sued NSTXL for breach of contract and declaratory relief. *See Cause No. 2018-06530; NSTI LLC v. Defense Energy Center of Excellence*, in the 334th Judicial District Court of Harris County, Texas. Disturbingly, TechConnect was represented in this lawsuit by the Lawyers. It is apparent that the Lawyers shared confidential information with Laudon and TechConnect by the fact that they sued NSTXL on behalf of TechConnect. Due to this egregious conflict of interest, NSTXL has suffered damages and/or the Lawyers have obtained wrongful benefits as set forth more fully below.

VI STATEMENT OF CLAIMS

14. Therefore, it has become necessary to bring this suit to collect a legal debt of money damages owing to Plaintiff due to the Defendants' conduct. Defendants' actions constitute negligence, breach of fiduciary duty and conversion.

A. NEGLIGENCE

15. At all material times, an attorney-client relationship existed between Plaintiff and Defendants. Thus, Defendants owed Plaintiff duties of care as a matter of law. In addition to the allegations outlined above, Defendants fell below the standard of care in the underlying representation in that they failed to protect Plaintiff's interest and failed to properly and diligently represent plaintiff.

16. Of course, nothing Plaintiff did, or failed to do, caused or in any way contributed to cause the occurrences that resulted in losses and damages to Plaintiff. On the contrary, the Defendants fell below the standard of care for attorneys practicing law in Texas, and thus, Defendants' conduct was a proximate and/or producing cause of Plaintiff's losses and damages.

17. Moreover, at all times material to the causes of action asserted herein, the Defendants' conduct was regulated by the Texas Disciplinary Rules of Professional Conduct. Even if the Disciplinary Rules do not establish a statutory standard of conduct sufficient to establish negligence *per se*, the requirements of these rules establish public policy against such conduct and their violation constitutes negligence as that term is understood in legal malpractice when supported by the expert opinion of an attorney familiar with the standard of care and/or the standard of care and conduct defined by these rules.

B. BREACH OF FIDUCIARY DUTY

18. At all material times, a fiduciary relationship existed between Plaintiff and Defendants because Defendants were attorneys for Plaintiff in the matters described herein. Thus, Defendants owed Plaintiffs the following fiduciary duties as a matter of law:

- Duty of loyalty and utmost good faith;

- Duty of candor;
- Duty of confidentiality;
- Duty to refrain from self-dealing, which extends to dealings with persons whose interests are closely identified with those of the fiduciary;
- Duty to act with integrity of the strictest kind;
- Duty of fair, honest dealing;
- Duty of full disclosure; that is, a duty not to conceal matters that might influence a fiduciary to act in a manner prejudicial to the principal;
- Duty to represent Plaintiff with undivided loyalty;
- Duty to act with absolute perfect candor, openness, honesty, and without any concealment or deception, no matter how slight;
- Duty to inform Plaintiff to seek outside counsel prior to entering into any joint representation;
- Duty to avoid conflicts of interest, including any personal conflicts of interest or self-dealing;
- Duty to return Plaintiff's property promptly upon request; and
- Duty to inform Plaintiff of the pros, cons, advantages, disadvantages and implications and nature of the joint representation relationship.

19. Defendants knowingly and intentionally breached every one of the above-referenced fiduciary duties. Defendants had a conflict of interest in simultaneously representing NSTXL and Bryant's nephew, Laudon and his company TechConnect. Defendants placed their interest and the interests of Laudon and TechConnect ahead of Plaintiff. Defendants failed to obtain fully informed consent to the joint representation and failed to inform Plaintiff of the pros, cons, advantages, disadvantages and implications and nature of the joint representation. Moreover, Defendants failed to inform Plaintiff to seek outside counsel prior to entering into any joint representation, or agreeing to the terms of the agreements they drafted, including the Vendor Agreement. Defendants failed to disclose to Plaintiff that they would put their interests

and the interests of Laudon and TechConnect ahead of Plaintiff. And, in fact, Defendants did place their interests and the interests of Laudon/TechConnect ahead of Plaintiff's interests by drafting terms in the agreements which significantly favored Laudon and TechConnect and then suing Plaintiff for alleged violation of these agreements.

20. Defendants conduct constitutes a breach of fiduciary duty as a matter of law. Texas Disciplinary Rule of Professional Conduct 1.05 prohibits the disclosure of confidential information. Rules 1.06 and 1.07 prohibit conflicts of interest. Even if a violation of these rules do not on their own give rise to a breach of fiduciary duty claim, they set forth minimum standards of conduct for attorneys practicing law in Texas and Defendants' gross deviation from these minimum standards of conduct constitute breach of fiduciary duty.

21. Had Defendants properly and adequately disclosed the nature of the joint representation and the conflict of interest, as well as the terms of the agreements, Plaintiff would have never agreed to the joint representation or entered into the agreements with TechConnect and Laudon. Consequently, the underlying litigation would have never arose, and Plaintiff would have never incurred more than \$1,000,000 in litigation costs and expenses. Nor would Plaintiff have ever incurred any amount Plaintiff ultimately pays to resolve that litigation. But the extent of the conflict was never adequately disclosed, and Defendants benefited from the conflict of interest in that they reaped attorney's fees for suing their own client. And, to the extent Laudon or TechConnect obtains any recovery, Defendants' breach of fiduciary duty caused their other clients to benefit at the expense of Plaintiff. Therefore, in addition to recovering any actual damages sustained, Plaintiff seeks to disgorge the improper benefits that Defendants obtained by competing with its fiduciary, Plaintiff.

C. CONVERSION

22. Defendants are liable to Plaintiff for conversion. Defendants possess personal property that belongs to the Plaintiff. This property includes, but is not limited to, the Plaintiff's original client file and documents regarding the joint representation. Despite the Plaintiff's repeated requests that the Defendants return this property, Defendants have refused and continue to refuse to comply with these requests, thereby depriving Plaintiff of its rightful property. As a direct result of the Defendants' conduct, the Plaintiff has suffered damages in an amount to be proved at trial.

**VII
DAMAGES**

23. Regarding the causes of action and conduct alleged above, Plaintiff has sustained pecuniary losses that were proximately caused by Defendants' conduct. Plaintiff hereby seeks the maximum allowable of actual damages that are within the jurisdictional limits of this court in excess of \$1,000,000.

A. ACTUAL DAMAGES

24. Plaintiff seeks actual damages in the amount of the litigation costs and expenses incurred by Plaintiff relating to its agreements with Laudon and TechConnect that were drafted by Defendants. These damages are in excess of \$1,000,000. In addition, Plaintiff seeks as actual damages any amounts paid to resolve these claims.

B. EXEMPLARY DAMAGES

25. Due to Defendants' intentional breach of fiduciary duty, Plaintiff is entitled to exemplary damages which it seeks herein. Plaintiff seeks exemplary damages to the maximum extent of the law.

C. FEE FORFEITURE/ RETURN OF ILL-GAINED BENEFITS RECEIVED

26. Due to Defendant's intentional breach of fiduciary duty, Plaintiff is entitled to disgorge all fees and expenses paid to Defendant by Plaintiff. Thus, Plaintiff seeks complete fee forfeiture from Defendant. In addition, the Court may order all profits obtained by a fiduciary to be disgorged as a result of the breach of fiduciary duty when the fiduciary competes with the beneficiary and benefits in some way. Thus, Plaintiff seeks to disgorge the undetermined amount of attorney's fees paid to Defendant by TechConnect/Laudon for work performed related to the transactions at issue and the representation of TechConnect and Laudon in matters opposite of Plaintiff. The law does not allow Defendants to profit off of their intentional breach of fiduciary duty by knowingly engaging in a conflict of interest to their benefit and the benefit of their other clients (TechConnect/Laudon) and to the detriment of Plaintiff.

**VIII
DISCOVERY & TOLLING RULE**

27. To the extent necessary, Plaintiff affirmatively pleads the discovery rule and/or the *Hughes* tolling rule to any defense of limitations asserted by Defendants regarding any of Plaintiff's causes of action.

**IX
JOINT LIABILITY**

28. At all times material hereto, Defendants represented Plaintiff in the legal matters described herein. At all times material hereto, all of the specific acts complained of herein are attributable to the conduct of the individual attorneys associated with their respective law firms as partners, agents, servants, representatives and/or employees. Thus, the liability and responsibility of Defendants is vicarious, joint and several. Plaintiff further pleads the legal

theory of *respondeat superior* as between the individual lawyers named herein and their law firms for which they practice law under.

**X
JURY DEMAND**

29. Plaintiff desires to have a jury decide this case and makes this formal request pursuant to Texas Rule of Civil Procedure 216. This request is filed more than thirty days before this case has been scheduled for trial and all fees have been (or will be) paid.

**XI
REQUEST FOR DISCLOSURE**

30. Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Texas Rule of Civil Procedure 194.2.

**XII
NOTICE OF INTENT TO USE PRODUCED DOCUMENTS**

31. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, each party is hereby given notice of Plaintiff's intent to use any and all documents produced by any party.

**XIII
PRAYER**

WHEREFORE, Plaintiff prays that after trial herein, that judgment be entered against Defendants jointly and severally as prayed for, that costs of court be taxed against Defendants, that Plaintiff be given prejudgment as well as post judgment interest, and for such other and further relief, at law and in equity to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

THE KASSAB LAW FIRM



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